



IT IS HEREBY ADJUDGED and DECREED that the below described is SO ORDERED.

Dated: May 03, 2016.

A handwritten signature in black ink, appearing to read "H. Mott".

**H. CHRISTOPHER MOTT
UNITED STATES BANKRUPTCY JUDGE**

**IN THE UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

In Re:

CleanFuel USA, Inc.,

Debtor.

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**Case No. 16-10398-HCM
Chapter 11**

**FINAL ORDER AUTHORIZING DEBTOR TO OBTAIN POST-PETITION
FINANCING AND TO GRANT ADMINISTRATIVE SUPER-PRIORITY CLAIM
PURSUANT TO 11 U.S.C. §§ 105 AND 364 (c)(1)**

On May 2, 2016, the Court conducted a hearing (the “**Final Hearing**”) on Debtor’s Motion for Authority to Obtain Post-Petition Financing Pursuant to 11 USC §364(c)(1) (the “**Original Motion**”),¹ of CleanFuel USA, Inc., as debtor and debtor-in-possession in the above-captioned chapter 11 case (“**CFUSA**” or “**Debtor**”), pursuant to sections 105(a), 361, 362, 364, and 507 of title 11 of the United States Code (the “**Bankruptcy Code**”) and Rules 2002, 4001, and 9014 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”) for interim and final orders, among other things, authorizing the Debtor to enter into a super-priority credit

¹ Capitalized terms used herein and not otherwise defined herein shall have the meanings ascribed thereto in the Motion.

facility with the Ed Rachal Foundation (the “**Foundation**”) (the “**DIP Financing**”) and modifying the automatic stay pursuant to section 362 of the Bankruptcy Code to the extent necessary and applicable. The Court entered an Interim Order on April 12, 2016 [Doc. 27]. Notice of the Interim Order and the final hearing on the Motion was sent to all creditors requesting notice, the United States Trustee, all secured creditors and the 20 largest creditors of the Bankruptcy Estate on April 18, 2016. Debtor filed a First Amended Motion to Obtain Post Petition Financing on April 27, 2016. (the “**First Amended Motion**”). The Original Motion and the First Amended Motion shall be referred to herein as the “**Motion**”). ICOM North America, LLC filed an objection to the Motion. With the appearances of the interested parties noted in the record thereof; the Court having read the Motion and considered the evidence and the arguments of counsel appearing regarding the relief requested in the Motion finds and determines as follows:

A. The Court has jurisdiction over the Motion pursuant to 28 U.S.C. § 1334. Venue is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409. This matter is core within the meaning of 28 U.S.C. § 157(b). The statutory predicates for the relief sought herein are sections 105(a), 361, 362, 364, and 507 of the Bankruptcy Code, and the procedural grounds are Rules 2002, 4001, and 9014 of the Bankruptcy Rules.

B. Notice of the Final Hearing was given to (i) the Office of the United States Trustee for the Western District of Texas, (ii) counsel for the Foundation, (iii) counsel for ICOM North America, LLC, (iv) United Bank; and (v) Debtor’s twenty largest unsecured creditors. Based on the record made by CFUSA, the Court finds that appropriate notice of the Final Hearing has been given and is in compliance with Bankruptcy Rule 4001.

C. The legal and factual bases set forth on the record at the Final Hearing establish just and sufficient cause to grant the relief granted herein. The relief granted herein is in the best interests of CFUSA, its estate, creditors, and all parties in interest and is critical to the continued operations of CFUSA.

D. CFUSA has been unable to obtain unsecured financing or other financing on more favorable terms than those contained herein.

E. The Foundation and CFUSA have negotiated the terms of the DIP Financing on an arm's length basis and the terms of the DIP Financing represent market rate terms or better for a facility of this type and character and the DIP Financing to be extended by the Foundation is done in good faith

F. Debtor has stipulated:

1. that the Foundation holds a valid and enforceable pre-petition debt of \$16,658,597.00, (the "**Pre-Petition Claim**") secured by a first priority perfected lien on all of Debtor's assets, including without limitation, Debtor's accounts, accounts receivable, inventory, equipment, personal property, patents, trademarks, copyrights, trade secrets, intellectual property and all proceeds thereof (the "**Pre-Petition Collateral**");
2. Debtor holds no claims of any kind or character, and has no offsets or other defenses to the Pre-Petition Claim;
3. Debtor waives any right to surcharge the Pre-Petition Collateral or any replacement collateral under Section 506 (c) of the Bankruptcy Code in partial consideration for the Foundations willingness to provide the DIP Financing pursuant to the terms described herein.

The Court approves and accepts such stipulations and finds them as facts, subject to any party in interest (other than Debtor) filing an adversary proceeding that challenges the liens and security interests of Lender. Any such adversary proceeding must be filed by no later than August 1, 2016.

THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:

1. The Motion is granted only to the extent stated herein.
2. CFUSA is immediately authorized and empowered to borrow funds pursuant to the terms and conditions of the Promissory Note for the DIP Financing up to the aggregate amount of \$1,450,000.00, inclusive of the \$250,000.00 previously authorized by the Interim Order (the “**DIP Funding**”); *provided however*, that CFUSA shall use the proceeds of the DIP Funding solely to pay the items set forth on the Budget attached hereto as **Exhibit “A.”** unless otherwise agreed to by the Foundation in writing. Any other use of the DIP Funding, except as permitted herein, is and shall be strictly prohibited. On the 20th day of each month, Debtor shall remit to the Foundation, the actual amount of cumulative cash as of the last day of the preceeding month which is in excess of \$100,000.00, unless a lesser amount is agreed to by the Foundation in writing. Any such payment shall be applied to the DIP Funding, and shall not reduce any Pre-Petition Claim. Once the DIP Financing is fully satisfied and repaid to Lender, no payments shall be made to Lender for pre-petition debt, except upon further order of this Court. The DIP Funding shall only be used for the purposes specifically set forth in this Order and in the Budget, and for no other purpose. Use of DIP Funding for purposes outside of the Budget, without the written approval of the Foundation, shall constitute a default under the terms of this Order. The DIP Budget may be amended or modified in writing from time to time by the Debtor only with the written consent of the Foundation, in its sole and absolute discretion, and such amendment or

modification shall not require the consent of any Committee, the United States Trustee or any other creditor or party in interest. The Debtor shall file with the Court any updated or modified Budget.

3. CFUSA is hereby authorized to do and perform all acts and to make, execute, deliver and be bound by the terms and conditions of the Promissory Note for the DIP Financing solely up to the aggregate amount of \$1,450,000. The DIP Funding shall be mature, due and payable on the earlier of:

- A. December 16, 2016;
- B. The appointment of a trustee or conversion of this Bankruptcy Case to a case under Chapter 7 of the Bankruptcy Code;
- C. Three (3) business days following default by Debtor under the terms of this Order and the Foundation providing Debtor and its counsel notice and opportunity to cure; or
- D. Confirmation of a plan.

4. Pursuant to section 364(c)(1) of the Bankruptcy Code, the Foundation is hereby granted a valid, binding, enforceable and allowed super-priority claim in the amount of all funds advanced under the DIP Financing, with priority over any or all administrative expenses of the kind specified in 11 U.S.C. §503(b) or 507(b) now or hereafter allowed, including but not limited to any administrative expense claims allowed in connection with any subsequent proceeding under Chapter 7.

5. If any provision of this Final Order is hereafter modified, vacated, reversed or stayed by subsequent order of this or any other court for any reason, such modification, vacation, reversal or stay shall not affect the validity and priority of the priority status granted under this Final Order.

6. Notwithstanding Rules 6004(h) of the Bankruptcy Rules, this Final Order, and all findings and stipulations contained herein shall be immediately effective and enforceable upon its entry and there shall be no stay of execution or effectiveness. This Final Order is binding on the Debtor and any successor to the Debtor (including but not limited to any subsequently appointed Trustee, all creditors and any parties in interest.

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Order submitted by:

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PROPOSED ATTORNEYS FOR DEBTOR

AGREED:

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ATTORNEYS FOR
THE ED RACHAL FOUNDATION

	Apr-16	May-16	Jun-16	Jul-16	Aug-16	Sep-16	Oct-16	Nov-16	Dec-16	Total
Starting Cash at 4/3/2016	7,215									7,215
DIP financing - Initial	250,000									250,000
DIP financing - Additional		600,000	600,000							1,200,000
Cash receipts										
	472,923	626,056	800,620	2,024,307	2,821,026	1,903,759	1,891,465	1,953,415	1,267,286	13,760,857
Subtotal	730,138	1,226,056	1,400,620	2,024,307	2,821,026	1,903,759	1,891,465	1,953,415	1,267,286	15,218,072
Cost of Goods Sold										
Primary Material Providers (COD)	306,510	436,383	895,708	1,524,077	1,209,322	1,203,658	1,168,298	845,969	547,445	8,137,370
Shipping		10,000	11,000	12,500	12,500	12,500	11,000	11,000	11,000	91,500
Payments to Prepetition Critical Vendors		50,000	50,000	50,000	50,000	50,000	50,000	50,000	50,000	400,000
Subtotal	306,510	496,383	956,708	1,586,577	1,271,822	1,266,158	1,229,298	906,969	608,445	8,628,870
Gross Margin	423,628	729,673	443,912	437,730	1,549,203	637,601	662,167	1,046,446	658,841	6,589,202
Operations										
Payroll	260,000	262,750	275,000	275,000	275,000	417,500	275,000	275,000	275,000	2,590,250
Certifications	54,900	245,000	160,000	85,000					117,000	661,900
Marketing	5,500	3,167	667	1,467	667	1,667	667	667	667	15,133
Travel & Sales Costs	9,341	26,288	26,247	28,022	23,178	19,847	22,697	22,883	19,247	197,748
Service & Warranty	20,030	10,000	10,000	10,000	11,500	11,500	11,500	11,500	11,500	107,530
Trustee & Misc Expenses		5,000	5,000	4,875	5,000	5,000	4,875	5,000	5,000	39,750
Insurance	11,385	10,728	16,420	16,420	16,420	16,420	16,420	16,420	16,420	137,052
Office Leases	1,648	1,648	1,648	1,648	1,648	1,648	1,648	1,648	1,648	14,832
Office Supplies/Expenses	5,500	6,618	5,143	5,143	10,643	5,143	5,143	5,143	5,143	53,622
Rent		10,200	10,200	10,200	10,200	22,200	10,500	10,500	10,500	94,500
Research & Development	10,000	10,000	10,000	10,000	60,000	12,500	12,500	12,500	12,500	150,000
Temp Labor	2,716	-	-	-	-	-	-	-	-	2,716
Telephone & Utilities	13,294	13,294	13,294	13,294	13,294	13,294	13,294	13,294	13,294	119,646
	394,314	604,692	533,619	461,069	427,550	526,719	374,244	374,555	487,919	4,184,679
Monthly net cash increase (decrease)	29,314	124,981	(89,707)	(23,339)	1,121,654	110,882	287,924	671,891	170,922	
Cumulative	29,314	154,295	64,588	41,249	1,162,903	1,273,785	1,561,709	2,233,600	2,404,523	2,404,523

EXHIBIT
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